land during the South African war, which was in no way discontinued when the South African Republics were wholly cut off from access to the German markets, a situation identical with the present.

The above is but an illustration of the light which these masterly papers throw on the vital questions discussed at the present moment.

It is of interest to add that a like volume of Westlake's periodical contributions to private international law, in which his authority was equally prëeminent as in public international law, is in contemplation. This will complete the record of Dr. Westlake in these two great branches to which he devoted his long life and his markedly able mind.

The university, the editor and all who pursue these useful and elevated studies are to be congratulated.

CHARLES NOBLE GREGORY.

Science et Technique en droit privé positif. Première Partie (Position actuelle du problème du droit positif, et Eléments de sa solution). By François Geny. Paris: Recueil Sirey. 1914. pp. xiii, 212.

The stupendous accumulation of printed matter in this now much agitated world, is no doubt due to the fact that each writer and author (the two do not always mean the same person) finds it necessary to discover for himself what has in many successions been discovered by others. There is a certain degree of utility and even necessity in this method which need not be here further discussed. Much of what falls in this preliminary division of what promises to be a somewhat extended essay, evokes the thought just expressed; but it must be conceded, that just because the present contribution is only an introductory part, a large number of such re-discoveries could hardly be avoided in reaching a new point of view (at least in French law writing) which affects the entire subject of legal method, and at the same time involves the foundations of law and legal rules.

The essential ideas which lie at the base of these studies, as the author states, were announced in a conference paper read in 1910, under the title, *Les procédés d'élaboration du droit civil*, published in book form with other essays of other well known French authors as *Les méthodes Juridiques* (Paris, 1911). This work is a logical continuation of the *Méthode d'interpretation et Sources en droit privé postif*, whose publication in 1899 at once marked the author as a writer of great insight and unusual industry. It has long since disappeared from the shelves of the bookseller, but once in a while a second-hand copy can be bought for about

80 francs. The work is well known to scholars in America, but doubtless more by report than otherwise, since it is safe to say that there are not five and perhaps not three copies of it to be found on the North American continent. The learned author has been much importuned to offer a new edition, and a good deal of curiosity has been aroused as to why these requests have gone unheeded. An explanation is now apparently offered, and it does Geny credit. While he hopes to be able to revive the book, he admits with a frankness, unusual to authors, that it contained radical infirmities in its conclusions. Along with this refreshing statement, which doubtless relieves the conscientious author's troubled mind, the wise critics are made to suffer. They did not see the gaping holes, and found fault with what was faultless. Thus perish the wicked.

The earlier work dealt with the sources of the law; the present study deals with its method. He proposes that jurists should "reject freely and decisively the illusion that written law embraces all the positive law in force." This form of statement is applicable to code countries. For us, he would, of course, change the formula to require that we put aside the illusion that case-law (added to early English Statute law) is all of the common law. There is no doubt much law which is not found in law-books. But what is law? Innocent is the question, but what mountains of controversy have been raised to answer it! From before the Vedas and steadily onwards jurists and philosophers have cast their divergent answers into a formless heap. Another attempted solution will do no harm, and by a lucky stroke perhaps may solve the riddle. According to Geny, it is "the totality of rules by which the external conduct of man in his relation to fellow-men, is governed, and which, under the inspiration of the natural idea of justice in a given state of collective human consciousness, appearing susceptible of a social sanction (coercitive if need be), are, or tend to be provided with a similar sanction, and already assume under the form of categorical commands to dominate particular wills for the purpose of bringing about order in society." Not a review, but a tome would be necessary to dispose of this long definition; but the most characteristic ingredient of this compound may shortly be separated from the rest for brief examination. Geny has a fondness for the phrase "equilibration of interests." These interests are to be balanced for the maintenance of human progress by the law, the principal content of which is justice. Law is only a branch of morals under a social aspect, or in the words of Jellinek the "minimum of ethics." Geny seems to approximate the position of Stammler whose name ap-

pears repeatedly in his references, but this is only conjecture, since Geny's concept of justice is of something "indefinable" and "irreducible." Where a mystery is desired, this one will be found quite satisfactory.

The most interesting and valuable portion of the present contribution is that which treats the topic, juridical epistemology. There has been until most recently a real vacancy in juristic literature exactly conterminous with this field of investigation, strange as it may seem that there could be any phase of legal thought which has not been explored from every point of the compass. Apart from the very solid essay of Wurzel,[1] and the earlier study of Rümelin,[2] and a few fragments locked up in books and essays principally of another intent, and especially among a few of the logicians, the ground was untrodden; and Geny may be welcomed here as possessing the right type of mind to look under the surface of things, and to discover the hidden roots of legal method. That these inquiries have been uncongenial to the man of law is due to the fact that here it is necessary to find a starting-point outside the law and especially in psychology.

The lawyer has been accustomed from time immemorial to regard the law as self-sufficient to solve not only its own problems, but even the problems of the other sciences where they come into contact in any way with the law machine. The law has independently constructed its own systems of ethics, economics, and psychology, and these systems are also authoritative even against the real facts. In this respect they have a genuine advantage over the systems of ethics, economics and psychology which admittedly are only hypothetical.

The field of legal method is much broader than that required merely by the application of an Aristotelian logic, to legal concepts. This fact was explicitly stated by Judge Holmes many years ago, but unfortunately he did not stop to tell us any more about it. Whether he saw the problem in its important bearings, is not even clear. Logic does not make its appearance in the law until a relatively late stage of legal growth, and even then, due to the large element of discretion which cannot be banished from any legal system, it must struggle for its existence with much that is illogical and even irrational. Geny shows that the rules of law originate in a supra-sensible atmosphere, in a conflict "of emotions, sentiments, or tendencies (desires, inclinations, feelings), of beliefs, wills, instincts, habits; in a word, of psychological realities

[1] *Das Juristische Denken*, Vienna, 1904.

[2] *Das Juristische Begriffsbildung*, Leipzig, 1878.

which are translated in needs or interests of an economic, moral, religious, etc., nature."

It is yet too early to speak in terms of praise or reproach of what Geny has accomplished in this new undertaking; since he has but stated the elements and foundations of his problems. We may, however, entertain the most lively expectations concerning the next issues of this work. It seems to be characteristic of the science of the day to proceed from a kind of pluralistic standpoint. This attitude at least has the merit that it tends to avoid the one-sidedness which frequently extends a truth to the limits of disproportion. Such seems to be the method of work of the author. In his special inquiry, much of what must be resolved turns upon the poles of intuition and intellectualism. The intervening stretches are inhabited by such tribes as the Bergsonian philosophers, at one extreme, and the "law is logic" Eskimos at the other. A figurative moderation might select the equatorial belt as true line of juridical reality, but the temperate zone will be found elsewhere. If a word of criticism or suggestion were offered, one might say that as an element of legal method, Geny has made entirely too little of teleology. The word itself is found only once (p. 137) in this introductory essay, and then it appears that teleology is to be a pendant of intuition. We should regard it as a serious scientific defect if the rôle of teleology in the subsequent elaboration of the thesis of legal method is to be thus summarily disposed of.

ALBERT KOCOUREK.

Della Condizione Giuridica Delle Societa Commerciali Straniere. By Mario Marinoni. Rome: Athenaeum. 1914. pp. xi, 235, Lire 5.

This study of the legal position of foreign commercial associations in Italy, particularly as affected by Articles 230 to 232 of the Italian Code of Commerce, is of very considerable length and bears every evidence of serious and careful preparation: however, the reader who approaches it with the expectation of obtaining a general idea of the attitude adopted by the lawmakers and the courts of Italy towards foreign corporations, the powers and privileges and disabilities of such companies in practice, is doomed to disappointment.

It is in fact an examination scientific in a somewhat narrow sense and almost microscopic of three or four sections of the Code of Commerce prescribing the formalities by way of publication and record necessary in order to enable a foreign company or partnership to operate in Italy.